

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

SHAUN ROONEY, an individual,  
on behalf of himself and all  
other similarly situated,

No. 2:20-cv-00671-JAM-FEB

Plaintiff,

**ORDER GRANTING MOTION TO REMAND**

v.

SAVE MART SUPERMARKETS; DOES  
1-20, inclusive,

Defendant.

On February 6, 2020, Shaun Rooney's ("Plaintiff") filed a proposed wage and hour class action complaint in Sacramento Superior Court against his former employer, Save Mart Supermarkets ("Defendant"). Not. of Removal, ECF No. 1, Exh. A. Defendant then filed a notice of removal, invoking the Court's federal jurisdiction under 28 U.S.C. §§ 1331, 1441 and 1446. Id. at 2.

Before the Court is Plaintiff's motion to remand. Plaintiff contends that this Court lacks jurisdiction because his claims arise only under state law. Mot., ECF No. 8. Defendant opposes

1 this motion. For the reasons described below, the Court GRANTS  
2 Plaintiff's motion to remand.<sup>1</sup>

3

4 I. FACTUAL ALLEGATIONS AND PROCEDURAL BACKGROUND

5 Plaintiff worked at Save Mart Supermarkets as an Order  
6 Selector for about seven and a half years. Not. of Removal, Exh.  
7 A, Compl. Plaintiff asserts six causes of action under state law  
8 against Defendant for: (1) failure to provide wage statements,  
9 (2) failure to pay overtime wages, (3) failure to keep requisite  
10 payroll records, (4) waiting time penalties, (5) violating  
11 California Unfair Competition Law, and (6) derivative California  
12 Private Attorneys General Act ("PAGA") claims based on the first  
13 four causes of action. Mot. at 7.

14 On March 30, 2020, Defendant removed Plaintiff's suit to  
15 this Court. See Not. of Removal. Although all of Plaintiff's  
16 claims arise under state law, Defendant removed on the grounds  
17 that Plaintiff's overtime claim is preempted by Section 301 of  
18 the Labor Management Relations Act ("LMRA").

19

20 II. OPINION

21 A. Legal Standard

22 Courts must strictly construe the removal statute against  
23 removal jurisdiction. Gaus v. Miles, Inc., 980 F.2d 564, 566  
24 (9th Cir. 1992). Generally, "any civil action brought in a  
25 State court of which the district courts of the United States

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27 <sup>1</sup> This motion was determined to be suitable for decision without  
28 oral argument. E.D. Cal. L.R. 230(g). The hearing was  
scheduled for June 2, 2020.

1 have original jurisdiction, may be removed by the defendant."

2 28 U.S.C. § 1441.

3 Courts have original jurisdiction—or federal question  
4 jurisdiction—of all civil actions arising under the  
5 Constitution, laws, or treaties of the United States. 28 U.S.C.  
6 § 1331. A plaintiff's well-pleaded complaint must establish  
7 "either that federal law creates the cause of action or that the  
8 plaintiff's right to relief necessarily depends on a resolution  
9 of a substantial question of federal law." Easton v. Crossland  
10 Mortg. Corp., 114 F.3d 979, 982 (9th Cir. 1997) (internal  
11 citations omitted). In other words, "it must be clear from the  
12 face of the plaintiff's well-pleaded complaint that there is a  
13 federal question." Id. (internal citations omitted). "[A]  
14 civil complaint raising claims preempted by Section 301 [of the  
15 LMRA] raises a federal question that can be removed to a federal  
16 court." Curtis v. Irwin Industries, Inc., 913 F.3d 1146, 1152  
17 (9th Cir. 2019).

18 In determining whether removal is proper, "it is to be  
19 presumed that a cause of action lies outside [the] limited  
20 jurisdiction [of federal courts] and the burden of establishing  
21 the contrary rests upon the party asserting jurisdiction."  
22 Hunter v. Philip Morris USA, 582 F.3d 1039, 1042 (9th Cir.  
23 2009) (internal citations omitted).

24       B. Analysis

25 Defendant argues the Court has federal jurisdiction over  
26 Plaintiff's suit because his claim for overtime pay is preempted  
27 by section 301 of the LMRA since he worked pursuant to a  
28 collective bargaining agreement ("CBA"). Not. of Removal ¶ 4.

1 Plaintiff, on the other hand, argues removal is not proper  
2 because the CBA at issue does not meet the requirements for  
3 preemption. Mot. at 6.

4 Section 301 provides federal jurisdiction over "suits for  
5 violation of contracts between an employer and a labor  
6 organization." Burnside v. Kiewit Pacific Corp., 491 F.3d  
7 1053, 1058-59 (9th Cir. 2007). Congress enacted this statute to  
8 mandate federal courts "to fashion a body of federal common law  
9 to be used to address disputes arising out of labor contracts."  
10 Id. The preemptive force of this section entirely displaces any  
11 state cause of action for violation of a labor contract and  
12 transforms it into a claim that shall be considered as arising  
13 under federal law. Id. But not every dispute concerning a  
14 labor contract or "tangentially involving a provision of a  
15 [CBA]," is preempted by Section 301. Sarmiento v. Sealy, Inc.,  
16 No. 18-cv-01990-JST, 2019 WL 3059932 (N.D. Cal. July 12, 2019).

17 Courts use a two-part test to determine whether Section 301  
18 preemption is proper. Burnside, 491 F.3d at 1059-60. First,  
19 courts must determine whether the cause of action is grounded in  
20 state law or in a CBA. Id. at 1060. If the claim seeks to  
21 "purely vindicate a right or duty created by the CBA itself,"  
22 then the claim is preempted, and the inquiry ends there.  
23 Curtis, 913 F.3d at 1152-53. Otherwise, the Court proceeds to  
24 the second step and asks whether the state law claim is  
25 "substantially dependent on [the] analysis of the CBA." Id. at  
26 1153. If the claim requires "interpreting" the CBA, rather than  
27 simply "looking to" it, the state law claim is preempted. Id.  
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1           1. Step 1: Whether the Right Exists Solely as a Result  
2           of the CBA

3           To determine if a right is independent of a CBA, the Court  
4 must consider whether the "legal character of a claim" is  
5 "independent of rights under the [CBA]." Burnside, 491 F.3d at  
6 1060. Moreover, "reliance on the CBA as an aspect of a defense  
7 is not enough to inject a federal question into an action that  
8 asserts what is plainly a state-law claim." Id. (internal  
9 quotations omitted).

10          At issue is Plaintiff's second cause of action for failure  
11 to pay overtime wages under California Labor Code Section 510.  
12 Not. of Removal ¶ 5. Plaintiff asserts that Defendant did not  
13 pay him, and similarly situated employees, overtime wages owed  
14 under Section 510 for "regularly work[ing] in excess of (8)  
15 hours a day/and or forty (40) hours per week." Not. of Removal,  
16 Exh. A, ECF No. 1-1, Compl. ¶ 33.

17          But the overtime requirements in Section 510 do not apply  
18 to an employee working "[a]n alternative workweek schedule  
19 adopted pursuant a [CBA]." Cal. Lab. Code § 510(a)(2). To be  
20 exempted from Section 510, the CBA must expressly provide for  
21 "the wages, hours of work, and working conditions of the  
22 employees," and must provide "premium wage rates for all  
23 overtime hours worked and a regular hourly rate of pay for those  
24 employees of not less than 30 percent more than the state  
25 minimum wage." Id. at § 514. Thus, if the CBA at issue meets  
26 the requirements of Section 514, Plaintiff's claim will be  
27 preempted. Curtis, 913 F.3d at 1154.

28          Plaintiff argues the CBA does not meet the requirements of

1 Section 514 because it fails to "provide a rate of pay of not  
2 less than 30 percent more than the state minimum wage for all  
3 employees covered under the CBA." Mot. at 10 (emphasis added).  
4 Defendant does not dispute this but argues instead that Section  
5 514 "does not require [that] all putative class members" earn  
6 more than 30% of the state minimum wage. Opp'n at 7. In other  
7 words, Defendant maintains it is enough that Plaintiff's rate of  
8 pay complies with this requirement. Id. at 8.

9 To resolve this dispute, the Court must interpret Section  
10 514. Plaintiff cites two cases that have analyzed this same  
11 question. See Mot. at 12-13. The Court finds both to be  
12 persuasive.

13 In Huffman v. Pac. Gateway Concessions LLC, the CBA in  
14 question also did not meet the rate of pay requirement with  
15 respect to all employees but did meet the requirement with  
16 respect to the plaintiff. No.19-cv-01791-PJH, 2019 WL 2563133,  
17 at \*5 (N.D. Cal. June 21, 2019). In interpreting the statute,  
18 the court first noted the use of the singular term "an  
19 employee," when Section 514 states a covered employee is exempt  
20 from Section 510. Id. Next, the statute states the CBA must  
21 "expressly provide[] for the wages, hours of work, and working  
22 conditions of the employees["] Id. Contrasting "an employee"  
23 with "the employees," the court found this part of the statute  
24 requires the CBA to provide the expressed requirements as to  
25 "all employees covered by the CBA." Id. Third, the court noted  
26 the statute's requirement that the CBA provide premium overtime  
27 rates and minimum wages exceeding no less than 30% of the state  
28 minimum wage "for those employees." Id. The court found the

1 "plural term 'those employees' refers back to the statute's  
2 earlier use of 'the employees' which, as discussed above, means  
3 all employees covered by the CBA." Id. Accordingly, the court  
4 held "it was apparent from the statute's plain language that the  
5 CBA must satisfy Section 514's requirements with respect to all  
6 covered employees in order to render Section 510 inapplicable to  
7 any particular employee." Id. at 6. Because the CBA at issue  
8 failed to provide an hourly rate of 130% the state minimum wage  
9 for at least some employees, "plaintiff's asserted cause of  
10 action involved a right conferred upon an employee by virtue of  
11 state law." Id.

12 In Sarmiento, the court grappled with the same issue. 2019  
13 WL 3059932, at \*7. Relying on the reading of the statute's  
14 plain language in Huffman, the Court also found Section 514 must  
15 apply to all employees covered under the CBA for the claim to be  
16 preempted. Id. at \*9. Here too, the Court adopts the reading  
17 of the statute's plain language in Huffman, to find that the CBA  
18 does not meet Section 514's requirements because it does not  
19 meet the requirements with respect to all employees.

20 The Court does not find the authority Defendant relies on  
21 to be persuasive, because those cases did not involve the same  
22 issue and did not interpret the statute as to this specific  
23 inquiry. Reply at 6; see e.g., Curtis, 913 F.3d at 1153-54  
24 ("[Plaintiff] does not dispute that both CBA's expressly provide  
25 [] the [expressed requirements] of Section 514."). Accordingly,  
26 the Court finds "[P]laintiff's asserted cause of action involves  
27 a right conferred upon an employee by virtue of state law, not  
28 by a CBA." Huffman, 2019 WL 2563133, at \*6.

1           2. Step 2: Whether The State Law Right is Substantially  
2           Dependent on the CBA

3           The Court must next consider whether Plaintiff's cause of  
4 action is nevertheless "substantially dependent on analysis of  
5 [the CBA]." Burnside, 491 F.3d at 1059-60. If the claim can be  
6 resolved by only "looking to" the CBA, then the claim is not  
7 preempted. Id.

8           Defendant argues Plaintiff's overtime claim is preempted  
9 because it is "substantially dependent" on the CBA. Opp'n at  
10 10. Yet Defendant only argues that the claim requires the Court  
11 to look to the CBA to determine if it meets Section 514  
12 requirements and to determine "what is the proper rate of pay  
13 for [] hours worked." Opp'n at 13. But the Ninth Circuit made  
14 clear in Burnside that looking to the CBA "merely to discern  
15 that none of its terms is reasonably in dispute," or to  
16 "comput[e] [a] penalty," "is [not] enough to warrant  
17 preemption." 491 F.3d at 1060. Moreover, Defendant already  
18 admitted that the wage structure in this CBA does not meet the  
19 state minimum wage pay rate requirement. Opp'n at 7-10. Thus,  
20 the resolution of Plaintiff's claim does not require more than  
21 just a mere reference to the CBA. Plaintiffs claims are  
22 therefore not preempted, because the overtime claim is not  
23 substantially dependent on analysis of the CBA.

24           3. Supplemental Jurisdiction

25           Because Plaintiff's second cause of action is not preempted  
26 by Section 301, the court lacks subject matter jurisdiction over  
27 this claim. See Burnside, 491 F.3d at 1060. The Court  
28 therefore does not have supplemental jurisdiction over

1 Plaintiff's other causes of action.

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III. ORDER

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For the reasons set forth above, the Court GRANTS  
5 Plaintiff's Motion to Remand this case to the Sacramento County  
6 Superior Court.

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IT IS SO ORDERED.

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Dated: July 7, 2020

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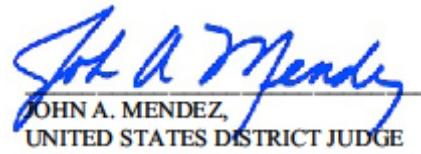
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JOHN A. MENDEZ,  
UNITED STATES DISTRICT JUDGE